

**§ 3.4 Definitions.**

*Agency point of contact (POC).* The individual identified by the military department or defense agency as its POC for prototype OTs.

*Agreements Officer.* An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make related determinations and findings.

*Approving Official.* The official responsible for approving the OTs acquisition strategy and resulting OT agreement. This official must be at least one level above the Agreements Officer and at no lower level than existing agency thresholds associated with procurement contracts.

*Awardee.* Any business unit that is the direct recipient of an OT agreement.

*Business unit.* Any segment of an organization, or an entire business organization which is not divided into segments.

*Contracting activity.* An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It includes elements designated by the Director of a Defense Agency which has been delegated contracting authority through its agency charter.

*Contracting Officer.* A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings as defined in Chapter 1 of Title 48, CFR, Federal Acquisition Regulation, Section 2.101(b).

*Cost-type OT.* Agreements where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-Federal parties pursuant to statute or require submittal of financial or cost records/reports to determine whether additional effort can be accomplished for the fixed amount.

*Fixed-price type OT.* Agreements where payments are not based on amounts generated from the awardee's financial or cost records.

*Head of the contracting activity (HCA).* The official who has overall responsibility for managing the contracting activity.

*Nontraditional Defense contractor.* A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on (1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or (2) any other contract in excess of \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

*Procurement contract.* A contract awarded pursuant to the Federal Acquisition Regulation.

*Project Manager.* The government manager for the prototype project.

*Qualified Independent Public Accountant.* An accountant that is licensed or works for a firm that is licensed in the state or other political jurisdiction where they operate their professional practice and comply with the applicable provisions of the public accountancy law and rules of the jurisdiction where the audit is being conducted.

*Segment.* One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

*Senior Procurement Executive.* The following individuals:

- (1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);
- (2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);
- (3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

(4) The Directors of Defense Agencies who have been delegated authority to act as Senior Procurement Executive for their respective agencies.

*Single Audit Act.* Establishes uniform audit requirements for audits of state and local government, universities, and non-profit organizations that expend Federal awards.

*Subawardee.* Any business unit of a party, entity or subordinate element

## Office of the Secretary of Defense

## § 3.7

performing effort under the OT agreement, other than the awardee.

*Traditional Defense contractor.* Any business unit that does not meet the definition of a nontraditional Defense contractor.

[68 FR 27457, May 20, 2003, as amended at 69 FR 16482, Mar. 30, 2004]

### § 3.5 Appropriate use.

In accordance with statute, this authority may be used only when:

(a) At least one nontraditional Defense contractor is participating to a significant extent in the prototype project; or

(b) No nontraditional Defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

(1) At least one third of the total cost of the prototype project is to be paid out of funds provided by non-Federal parties to the transaction.

(2) The Senior Procurement Executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a procurement contract.

[67 FR 54956, Aug. 27, 2002]

### § 3.6 Limitations on cost-sharing.

(a) When a nontraditional Defense contractor is not participating to a significant extent in the prototype project and cost-sharing is the reason for using OT authority, then the non-Federal amounts counted as provided, or to be provided, by the business units of an awardee or subawardee participating in the performance of the OT agreement may not include costs that were incurred before the date on which the OT agreement becomes effective. Costs that were incurred for a prototype project by the business units of an awardee or subawardee after the beginning of negotiations, but prior to the date the OT agreement becomes effective, may be counted as non-Federal amounts if and to the extent that the Agreements Officer determines in writing that:

(1) The awardee or subawardee incurred the costs in anticipation of entering into the OT agreement; and

(2) It was appropriate for the awardee or subawardee to incur the costs before the OT agreement became effective in order to ensure the successful implementation of the OT agreement.

(b) As a matter of policy, these limitations on cost-sharing apply any time cost-sharing may be recognized when using OT authority for prototype projects.

[67 FR 54956, Aug. 27, 2002]

### § 3.7 Comptroller General access.

(a) A clause must be included in solicitations and agreements for prototype projects awarded under authority of 10 U.S.C. 2371, that provide for total government payments in excess of \$5,000,000 to allow Comptroller General access to records that directly pertain to such agreements.

(b) The clause referenced in paragraph (a) of this section will not apply with respect to a party or entity, or subordinate element of a party or entity, that has not entered into any other contract, grant, cooperative agreement or "other transaction" agreement that provides for audit access by a government entity in the year prior to the date of the agreement. The clause must be included in all agreements described in paragraph (a) of this section in order to fully implement the law by covering those participating entities and their subordinate elements which have entered into prior agreements providing for Government audit access, and are therefore not exempt. The presence of the clause in an agreement will not operate to require Comptroller General access to records from any party or participating entity, or subordinate element of a party or participating entity, or subordinate element of a party or participating entity, which is otherwise exempt under the terms of the clause and the law.

(c)(1) The right provided to the Comptroller General in a clause of an agreement under paragraph (a) of this part, is limited as provided by subparagraph (c)(2) of this part in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of